

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 234

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TRUST DEEDS; AMENDING SECTION 45-1503, IDAHO CODE, TO REVISE PROVISIONS RELATING TO TRANSFERS IN TRUST TO SECURE THE PERFORMANCE OF AN OBLIGATION AND FORECLOSURE; AMENDING SECTION 45-1507, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DISPOSITION OF PROCEEDS RECEIVED AT THE TRUSTEE'S SALE; AMENDING SECTION 45-1512, IDAHO CODE, TO REVISE PROVISIONS RELATING TO MONEY JUDGMENTS AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1503, Idaho Code, be, and the same is hereby amended to read as follows:

45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION – FORECLOSURE. (1) Transfers in trust of any estate in real property as defined in section 45-1502(5), Idaho Code, may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. The beneficiary may not under this chapter bring judicial action against any co-obligor or guarantor until the expiration of ninety (90) days after the recording of the notice of default. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor, obligor or guarantor of the obligation secured thereby or his successor in interest to enforce an obligation owed ~~by the grantor or his successor in interest~~ unless:

- (a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to section 45-1512, Idaho Code; or
- (b) The action is one for foreclosure as provided by law for the foreclosure of mortgages on real property; or
- (c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action against the grantor or his successor in interest to enforce the obligation owed by grantor or his successor in interest without first resorting to the security; or
- (d) The action is one excluded from the meaning of "action" under the provisions of section 6-101(3), Idaho Code; or

(e) The borrower(s), obligor(s) and guarantor(s), if any, have, after default, consented at their option to allow the trustee to conduct a public auction of the property covered by the trust deed within ninety (90) days of the recording of the notice of default and the property has not been sold within such time, in which event the beneficiary may commence judicial action against the guarantor but shall not commence any action against a borrower or co-obligor except as provided in section 45-1512, Idaho Code.

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. If the court finds that the property is not substantially valueless, the beneficiary may seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed.

SECTION 2. That Section 45-1507, Idaho Code, be, and the same is hereby amended to read as follows:

45-1507. PROCEEDS OF SALE – DISPOSITION. Any proceeds actually received at the trustee's sale, including the amount of any prevailing bid by the beneficiary in the form of a credit against the indebtedness secured by the trust deed, shall, to the extent of such proceeds or credit, reduce the obligation secured by the trust deed and shall also reduce the liability of any co-obligor or guarantor of the obligation secured by the trust deed. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee.

(2) To the obligation secured by the trust deed.

(3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear.

1 (4) The surplus, if any, to the grantor of the trust deed or to his successor in interest  
2 entitled to such surplus.

3 SECTION 3. That Section 45-1512, Idaho Code, be, and the same is hereby amended to  
4 read as follows:

5 45-1512. MONEY JUDGMENT – ACTION SEEKING BALANCE DUE ON  
6 OBLIGATION. (1) At any time within three (3) months after any sale under a deed of trust,  
7 as hereinbefore provided, a money judgment may be sought for the balance due upon the  
8 obligation for which such deed of trust was given as security, ~~and~~.

9 (2) ~~In~~ such action the plaintiff shall set forth in his complaint the entire amount of  
10 indebtedness which was secured by such deed of trust and the amount for which the same was  
11 sold and the fair market value at the date of sale, together with interest from such date of sale,  
12 costs of sale and attorney's fees.

13 (3) Before rendering judgment the court shall find the fair market value of the real  
14 property sold at the time of sale. It shall be a rebuttable presumption that the actual sale  
15 price of the real property was the fair market value as of the date of sale. The court may  
16 not render judgment against the borrower for more than the amount by which the entire  
17 amount of indebtedness due at the time of sale exceeds the fair market value at that time, with  
18 interest from date of sale, but in no event may the judgment against the borrower exceed the  
19 difference between the amount for which such property was sold and the entire amount of the  
20 indebtedness secured by the deed of trust.

21 SECTION 4. This act shall be in full force and effect on and after July 1, 2009; and the  
22 provisions of this act shall apply to all new transfers in trust and guarantys made on or after  
23 July 1, 2009.